

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MARTIN ROB CAGAN,

Plaintiff,

-against-

**REPORT AND
RECOMMENDATION**
CV 08-3710 (SJF)(ARL)

BRONEY GADMAN, et al.,,

Defendants.

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LINDSAY, Magistrate Judge:

By order dated December 3, 2008, District Judge Feuerstein referred the *pro se* defendant Caroleen VanHoomissen Phillips' motion to dismiss the complaint to the undersigned. On December 23, 2008, Judge Feuerstein also referred the motion to dismiss of the defendants Mark Tasker and Foxwilliams Solicitors as well as the *pro se* plaintiff's motion for summary judgment. At the time of the referral, the summary judgment motion was not fully briefed. Defense counsel have since advised this court that they were instructed by Judge Feuerstein's chambers, among other things, that (1) the defendants did not need to submit a formal motion to stay the summary judgment motion; (2) the defendants were not required to respond to the summary judgment motion; and (3) the defendants' motions to dismiss would be decided before the court would address the summary judgment motion. Counsel for Gadman further states that he was advised not to file his motion to dismiss, which he believed would be based on the principle of res judicata, until the court addressed the pending motions to dismiss based on jurisdictional issues.

Accordingly, the undersigned recommends that, the plaintiff's motion for summary judgment be denied with leave to renew, if necessary, after the pending motions to dismiss are decided. A copy of this order will be transmitted to counsel via ECF and mailed to the plaintiff

by certified mail. Any objections to this Report and Recommendation must be filed within ten days of such service. Failure to file objections within this period waives the right to appeal the District Court's Order. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72; *Beverly v. Walker*, 118 F.3d 900, 902 (2d Cir. 1997); *Savoie v. Merchants Bank*, 84 F.3d 52, 60 (2d Cir. 1996).

Dated: Central Islip, New York
May 26, 2009

/s/
ARLENE ROSARIO LINDSAY
United States Magistrate Judge